

**BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA**

**IN THE MATTER OF:**

<b>RULE AMENDMENTS GOVERNING</b>	) <b>Administrative Cause</b>
<b>SPECIAL BOATING ZONES ON</b>	) <b>Number 12-098L</b>
<b>TIPPECANOE LAKE, 312 IAC 5-6-9</b>	) <b>(LSA Document #13-213(F))</b>

**REPORT ON RULE PROCESSING, CONSIDERATION OF PUBLIC COMMENTS,  
ANALYSIS AND RECOMMENDATION REGARDING FINAL ADOPTION**

**1. RULE PROCESSING**

For consideration is a proposal to amend 312 IAC 5-6-9 governing the established special boating zones, commonly referred to as “ecozones” on Tippecanoe Lake located in Kosciusko County. The “ecozones” were initially established in 2009 following the receipt of a petition for rule change from Mark R. Ennes as the President of the Lake Tippecanoe Property Owners, Inc. (*LTPO*). The established “ecozones” were established with the inclusion of a “five year sunset clause” intended to “allow the DNR to determine the success of any adopted rule amendments.” See “*Hearing Officer’s Report with Recommendation for Final Adoption*”, *Administrative Cause 07-145L*. The sunset clause would cause the ecozones to expire on January 1, 2014.

On June 15, 2012, Mr. Ennes, as Past President of the LTPO submitted correspondence stating, in part, as follows:

LTPO believes the Eco Zones are producing a positive impact relative to the reestablishment of native aquatic vegetation, are assisting in safe boating practices, and are complementary to our long term goals of sustaining and enhancing water quality. LTPO would like to maintain these Eco Zones beyond the sunset date and want to know what the proper procedure is to accomplish this task.

Mr. Ennes’ correspondence was characterized as a citizens petition for rule change and was submitted to the Department of Natural Resources (*Department*) for the establishment of a committee to review the merits of the petition. The petition was later revised to request the elimination of the idle zone associated with a developed section of shoreline located in the

northeast corner of Lake Tippecanoe. Following the Department's committee's review, the present rule amendment proposal was granted preliminary adoption by the Natural Resources Commission (NRC) on May 14, 2013.

The proposed amendments will remove the expiration date previously established at 312 IAC 5-6-9(f) and will specify that only a boat powered by an electric trolling motor or paddle may be operated in "the Flats on the west side of the Ball Wetlands..." The proposal also eliminates the idle speed restriction for an area of Tippecanoe Lake "adjacent to Hoy's Landing" and "just north of the channel to Lake James".

The "Notice of Intent" to adopt the proposed rule amendment was posted to the INDIANA REGISTER database website as 20130522-IR-312130213NIA on May 22, 2013. The notice identified Doug Keller, Department of Natural Resources, Division of Fish and Wildlife, as the "small business regulatory coordinator" for purposes of Indiana Code § 4-22-2-28.1.

The Commission caused the information required by I.C. 4-22-2-22.5 to be included within the rulemaking docket maintained on its Internet website.

Executive Order 13-03 requires agencies to "suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the *Indiana Register* on or before January 14, 2013." The requirements of Executive Order 13-03 were restated, along with additional compliance information in Financial Management Circular 2013-01. In accordance with Executive Order 13-03 and Financial Management Circular 2013-01, Department Director, Robert E. Carter, submitted to the Office of Management and Budget (OMB) the Department's "Request for determination of applicable exceptions to EO 13-03 "Regulatory Moratorium". On May 13, 2013, Christopher D. Atkins, OMB Director, issued correspondence indicating, in part, that "DNR's request qualifies for an exception under Section 6(b) of Executive Order 13-03."

As specified by Executive Order 2-89 and Financial Management Circular 2010-4, fiscal analyses of the rule proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to the Office of Management and Budget on May 28,

2013. In a letter dated July 17, 2013 Christopher D. Atkins, Director, Office of Management and Budget, recommended that the proposed rule amendments be approved.

The NRC Division of Hearings submitted the rule proposal to the Legislative Services Agency (LSA) along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement”) on July 23, 2013. The Notice of Public Hearing was submitted to LSA on August 1, 2013. The Notice of Public Hearing, along with the Economic Impact Statement and the text of the proposed rule was posted to the INDIANA REGISTER database website on August 7, 2013 as 20130807-IR-312130213PRA. Following receipt of an “Authorization to Proceed” from LSA on August 1, 2013, the NRC Division of Hearings also caused a Notice of Public Hearing to be published by the Indianapolis Newspapers, a newspaper of general circulation in Marion County, Indiana, on August 7, 2013 and the Warsaw Times-Union, a newspaper of general circulation in Kosciusko County, Indiana. In addition, notice of the public hearing and a summary of the proposed rule changes were published on the NRC’s web-based electronic calendar.

## **2. REPORT OF PUBLIC HEARING AND COMMENTS**

### **a) Public Hearing Comments**

A public hearing was conducted at the North Webster Community Center in North Webster, Indiana on August 29, 2013 as scheduled. Sandra Jensen served as the hearing officer. Doug Keller participated on behalf of the Department’s Division of Fish and Wildlife. A summary of the oral comments received at the public hearing has been attached and incorporated by reference as Exhibit A.

### **b) Comments Received Outside Public Hearing**

An opportunity was provided for the public to submit written comments from approximately May 14, 2013 until August 29, 2013. Written comments were received through the U.S. Postal Service and through the Commission’s online comment form. These comments have been reproduced, attached and incorporated by reference as Exhibit B.

### **c) Response by the Department of Natural Resources**

The Department offered a written response to the public comments on September 3, 2013. A copy of the Department's response is attached as Exhibit C and is incorporated by reference.

### 3. ANALYSIS AND RECOMMENDATION

The administrative rule at issue was originally adopted to fulfill the following objectives:

- 1) To protect the Ball Wetland from further decline. Historical and personal accounts noted declines in the wetland, particularly in the flats area on the Lake Tippecanoe side of the wetland. Much of the decline was believed to be caused by high speed boating near the wetland.
- 2) For public safety in the heavily boated area between the lakes and in shallow areas around the wetland.
- 3) To create clearly enforceable restricted zones. The 200 ft. idle zone that applies to these lakes under Code is based on the legal shoreline. The approximate legal shoreline is well within the Ball Wetland and in some cases is far from the perceived shoreline. Establishing restricted zones a prescribed distance out from the 2008 perceived shoreline created the clearly enforceable speed zones.

*Natural Resources Commission, May 14, 2013 Meeting Minutes.*

The Department's committee assigned to consider the merit of Mark Ennes' June 2012 petition determined that Department law enforcement and patrol efforts as well as public safety has improved as a result of the placement of buoys that more clearly identify the shoreline idle zone boundaries. The committee also compared plant surveys that were completed in 2008 and again in 2012. Information reported to the Commission associated with the protection of the Ball Wetland and the flats area at the time the Commission granted preliminary adoption of this rule proposal indicates as follows:

- (1) It appears that submersed vegetation abundance and diversity has increased since the inception of the ecozone. This is illustrated by the increases in the number of sites with plants, mean species collected per site and the native diversity index.
- (2) There also appears to be an increase in the area covered by rooted floating and emergent vegetation.

*Id.* The Department's committee presented the rule proposal that will (1) eliminate the rule's expiration date; (2) allow boats operated with only paddle or electric trolling motor in the Flats;

and (3) remove a section of the idle zone located in the northeast corner of Lake Tippecanoe where the shoreline is more developed.

The majority of individuals who offered comments indicated support for the proposed rule amendments. However, a few individuals offering input question the appropriateness of eliminating the expiration date in the rule based upon their belief that there is no clear evidence to conclude that the rule has offered protections for the Ball Wetland or has facilitated the restoration of submerged or emergent native vegetation. These individuals cite the Commission's interest, expressed at the time the present rule was originally granted final adoption on January 13, 2009, in measuring the effectiveness of the rule and the need to establish metrics for that purpose.

Doug Keller, the Department's Aquatic Habitat Coordinator, offered the following more detailed plant survey data in response to these concerns:

Aquatic plant surveys were performed within the ecozone area in 2008 prior to establishment of the ecozone. The same survey points were revisited in the summer of 2012 to scientifically evaluate changes. The data clearly shows a marked improvement in the submersed plant community. Specific changes included 95% of survey sites with submersed plants in 2012 compared to 68% in 2008, species per site rose from 1.45 in 2008 to 2.03 in 2012, and the native species diversity index is up from 0.78 in 2008 to 0.81 in 2012.

There were less obvious changes in the emergent plant community when scientifically evaluated in 2008 and 2012. None the less the emergent beds increased over the 4 year period from 5.81 acres in 2008 to 6.95 acres in 2012. It is not surprising that the emergent plant community is slower in responding than the submersed plants. As submersed plants become denser the uprooting effect by wave action on emergent plants will be lessened and they will continue to improve.

The information available supports the conclusion that the rule as originally adopted by the Commission is serving the purposes intended. There is no dispute but that the idle zones and the clear identification of those zones improves boat patrol and enforcement as well as enhances public safety. "The data is present and improvements are obvious and will continue to be realized as time goes on especially in regards to the emergent plant community." *Department Response*. The proposed amendments that (1) will eliminate the expiration date; (2) will remove

a section of the idle zone in the northeast corner of the lake; and, (3) will require trolling motors to be electric powered appears to be supported by the majority of the interested members of the public and through appropriate data measurements. The proposed rule amendments are recommended for final adoption as proposed.

Dated: September 6, 2013

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Sandra L. Jensen  
Hearing Officer

**EXHIBIT A****PUBLIC HEARING COMMENT SUMMARY****Mary Ennes, Valparaiso, IN**

Mary Ennes expressed her support for maintaining the ecozone. She stated her belief that the lake is healthier. Ennes noted that the world is placing stress on nature and offered that this rule provides one additional thing that can distress the vegetation and lake.

**Mark Ennes, Valparaiso, IN**

Mark Ennes explained that he is a past president of the Lake Tippecanoe Property Owners (LTPO), which has a rich history of proactivity with respect to lake quality issues. Ennis offered that Grace College recently published results of a study associated with Kosciusko County lakes noting that fishing alone brings in \$28 million annually and that property taxes associated with lake properties amounts to \$15 million in county revenue annually. Ennes observed that clean water has a huge impact both economically and recreationally.

Ennis noted that the idle/eco zones were instituted at the request of the LTPO to prevent high speed boating in “the flats” area to prevent scour on the lake bed and to facilitate the resurgence of native plant species in that area. Ennes advised that, at the time, the LTPO’s consultants suggested that a 10 year sunset period would allow for assessing the benefits gained from the institution of the idle/eco zones but through compromise the sunset period in the rule was initially set at only five years.

Despite the shortened sunset period, Ennes noted that benefits had been observed in terms of boat patrols because the shoreline is now clearly identified with buoys instead of the boating public having to assume the location of the shoreline. More notably, however, Ennes explained that the LTPO’s consultants had recently completed an aquatic vegetation study revealing that “the flats” area has rebounded significantly with native vegetation. Ennes advised that the increase in native vegetation creates habitat for fishing, filtration of sediments and stabilization of the wetland area.

Ennes offered support for the rule amendments as proposed. He noted that the greatest amount of concern he had heard involved the removal of the sunset or expiration date. Ennes observed, however, that in the same way the idle/eco zones were created through the LTPO’s petition they could be removed through similar efforts. Ennes also noted that the amendments offered at this time, one of which eliminates an idle/eco zone area near Hoy’s Landing is indicative of the fact that the rule can be amended as time goes on.

Ennes noted the hope that the LTPO would be positioned to obtain some water quality grants. He expressed that presently there are plans involving Grace College to relocate some vegetation from within the watershed to “the flats” area in order to speed the revegetation process.

**Marty Long, Elkhart County, IN**

Marty Long explained that he is an owner of property located on Little Tippecanoe Lake. He expressed no concern with the continuation of the ecozones but offered the suggestion that the ski area be moved to “the big lake.” Long explained that it seemed inconsistent to have an ecozone with a “high-speed race track” immediately adjacent.

**Denise Long, Elkhart County, IN**

Denise Long advised that she owns property on James Lake and offered that in the past year she has seen a “vast improvement” urging that the ecozones be maintained.

**Jeff Thornburg, Leesburg, IN**

Jeff Thornburg advised that he is a recent past President and current Vice President of the LTPO who has worked on this project for the past two years. He stated support for the rule proposal. Thornburg expressed encouragement at seeing the resurgence of native plants and the sight of lily pads beginning to grow on both sides of the big lake. Thornburg stated that the group is “anxious” to begin work to revegetate the shoreline with native plantings cultivated from within the watershed and with restoration efforts using a LARE Grant that they expect to have reinstated next spring.

**Joe and Nancy Tynan, Kosciusko County, IN**

Joe Tynan offered that he and his wife are residents of property located on Tippecanoe Lake. Joe Tynan serves as an LTPO Board Member and is also a member of the Tippecanoe Watershed Foundation. He explained that he grew up on the lake and has spent nearly every year on the lake recalling the historic appearance of the area around the Ball Wetlands. He explained that it used to be “full of lily pads from Grassy Creek all the way to the channel of Little Tippy.” Mr. Tynan observed that the establishment of the ecozone has begun to stop the erosion of the wetland that forms the largest filtration system for the lake and urged that the ecozone be made permanent.

**Bob Smith, Leesburg, IN**

Bob Smith stated that he is a homeowner on James Lake and an LTPO member. Smith expressed support for the established ecozone and favor for the amendments proposed.

**Ron Chambers, Leesburg, IN**

Ron Chambers offered that he is an LTPO member and stated his support for the rule proposal. Chambers added the desire to see at least two additional buoys demarking the ecozone on the “Big Tippy side”, explaining that in some places the buoys are “kind of far apart.”

**Mike Lattimer, Kosciusko, IN**

Mike Lattimer explained that his family has lived on Lake Tippecanoe since 1948 and advised that since retiring he has moved to the lake. Lattimer also recalled when lily pads stretched across the entire area and offered support for the ecozones and the present rule proposal. Lattimer also expressed willingness to take actions necessary to preserve the wetland’s ability to filter sediments and nutrients.

**Dave Sheets, Kosciusko, IN**

Dave Sheets advised that he is a resident of the lake and offered support for the ecozones and the proposed rule amendments.

**Steve Matthias, North Webster, IN**

Steve Matthias stated that he is a Lake James resident, a member of the LTPO and a volunteer with the Kosciusko County Sheriff’s Department involved with lake patrol. Matthias agreed with the previous comments suggesting that the ski area, which he described as a slalom course, is in the wrong place. Matthias explained that while he did not believe the skiers had an intent to violate the idle/eco zones the buoys for the slalom course and the buoys marking the idle/eco zone are very close together and they are confused on occasion. Matthias added that the shoreline close to the slalom course is suffering from the wake caused by high speed boats, skiers and wake boarders. Matthias also agreed that some additional buoys should be placed on “the big lake” side and suggested further that the buoys should remain out all year.

**John Tyler, Kosciusko County, IN**

John Tyler is a Deputy with the Kosciusko County Sheriff’s Department who serves as the Lake Patrol Coordinator. Tyler also serves as the current LTPO President. Tyler echoed the comments of Mark



Ennes and offered support for the proposed rule amendments. Tyler advised that as the current LTPO President he has received no negative comments from the LTPO membership indicating further that all of the input he has received has been positive. He added that the delineation of the shoreline has been a benefit for boaters, many of whom have expressed appreciation for the establishment of the zones because it allows for clear understanding of the shoreline location and restrictions. Tyler stated that the addition of a couple of buoys on “the Big Tippy” side would be beneficial. Tyler also offered that a permanent delineation system would be helpful because it is difficult to get the buoys in place soon enough in the spring to notify the fishermen who are often on the lake sooner than the buoys can be placed. Alternatively, Tyler offered that a mechanism for quickly identifying the proper location for the buoys would aid in the placement of buoys.

## EXHIBIT B

### PUBLIC COMMENT

LSA Document #13-213  
Tippecanoe Lake Ecozones

<p><b>Commenter Name</b> Patrick Tynan  <b>City</b> Leesburg <b>County</b> KOSCIUSKO <b>State</b> IN  <b>E-Mail Address</b> ptynan@indy.rr.com  <b>Comments</b> I am against the elimination of the sunset clause at this time. I would be in favor to extend the date of the sunset portion in order to further develop results from the program. BUT it is way too early to be proposing the elimination of the sunset provision.  <b>Comment Received</b> 8/13/2013 11:47:04 AM</p>
<p><b>Commenter Name</b> Debra Smith  <b>City</b> Leesburg <b>County</b> KOSCIUSKO <b>State</b> IN  <b>E-Mail Address</b> debradrama@gmail.com  <b>Comments</b> Keep the EcoZone motorboat free.  <b>Comment Received</b> 8/13/2013 1:16:31 PM</p>
<p><b>Commenter Name</b> Becky Hartman  <b>City</b> Leesburg <b>County</b> KOSCIUSKO <b>State</b> IN  <b>Organization (optional)</b> Lake Tippecanoe Property Owners  <b>E-Mail Address</b> treasurer@ltpo.org  <b>Comments</b> I am in favor of eliminating the Sunset Clause for the Ecozone on Lake Tippecanoe. The ecozone has been a benefit in the reestablishment of underwater vegetation and in minimizing the deterioration of shoreline.  <b>Comment Received</b> 8/15/2013 12:52:08 AM</p>
<p><b>Commenter Name</b> James Covert  <b>City</b> syracuse <b>County</b> KOSCIUSKO <b>State</b> IN  <b>E-Mail Address</b> jcovert99@gmail.com  <b>Comments</b> 1. It seems that the conclusions regarding regrowth in the Flats zone are very preliminary and that maybe another 10 years would be needed to really see if regrowth was working. So rather than make this a permanent law, difficult to modify in the future, I suggest making it a 10 year sunset law.  2. The buoy placement in James lake has been inaccurate, erratic and not well maintained. Any better way of locating and anchoring them?  <b>Comment Received</b> 8/15/2013 3:15:56 PM</p>
<p><b>Commenter Name</b> Frank X Moosbrugger  <b>City</b> Leesburg <b>County</b> KOSCIUSKO <b>State</b> Indiana  <b>E-Mail Address</b> moosbrf2@msn.com  <b>Comments</b> I am in favor of the proposed changes to the ECO zone on lake Tippecanoe.  <b>Comment Received</b> 8/15/2013 3:36:44 PM</p>
<p><b>Commenter Name</b> Thomas Howard  <b>City</b> Warsaw <b>County</b> KOSCIUSKO <b>State</b> IN  <b>Organization (optional)</b> Lake Tippy Property Owner</p>

**E-Mail Address** tzhder@comcast.net

**Comments** I am in favor of these rule changes.

**Comment Received** 8/15/2013 3:49:49 PM

**Commenter Name** Terri E. Matchett

**City** Leesburg **County** KOSCIUSKO **State** Indiana

**E-Mail Address** tmatchett@firstmerchants.com

**Comments** As a property owner at Lake Tippecanoe and one who utilizes this waterway, I support the LTPO position of eliminating the ecozone area by Hoy's Landing, allowing only electric trolling motors in the Flats and eliminating the sunset provision. The test period for this ecozone has shown a definite positive impact. Vegetation in these areas has reappeared, providing a variety of benefits. Please consider approval of LTPO's recommendations as noted above.

**Comment Received** 8/22/2013 9:26:54 AM

**Commenter Name** Terry and Cheryl Walker

**City** Muncie **County** DELAWARE **State** Indiana

**E-Mail Address** twalker@munciepower.com

**Comments** We would like to strongly recommend that the DNR extend the present ECO Zone established permanently. We believe in the time that this zone was established, it is evident of the improvement in the wild life along the shore as well as the improvement in the water quality. It would be extremely short sighted to revert back to it was before. Anything that can be done to reverse the deterioration of the water quality in Lake Tippecanoe should be adopted NOW, if we are to preserve this natural body of water. It can provide a balance of recreation as well as providing a preservation of the unique wildlife and vegetation. We trust the majority of our property owners will concur and that the continuance in perpetuity of this ECO zone will be ratified.

**Comment Received** 8/22/2013 6:21:03 PM

**Commenter Name** Robert Ragland

**City** Leesburg **County** KOSCIUSKO **State** IN

**E-Mail Address** rags@reagan.com

**Comments** I am writing to state my opposition to eliminating the sunset clause concerning the ecozone on Lake Tippecanoe and Litty Tippy (James Lake).

The very company recommending to LTPO for eliminating the sunset clause is the very same company receiving thousands of dollars annually from LTPO to treat the two lakes for weed control. This clearly displays a bias towards pleasing LTPO in anticipation of future contractual monetary agreements.

Also, the two areas have not shown any improvement solely or any percentage due to the establishment of the ecozones. Weather, rains, temperature, winter, swans, farmland runoff and a whole host of other variables in my opinion have more to do with water quality than these ecozones.

The Indianapolis Water canal has an annual algae problem. There is no boat activity or the need for an ecozone.

Lake Tippecanoe and Litty Tippy have a natural many hundreds of acres watershed doing its job of filtering the waters of these lakes. The acreage of the ecozones has a minute, if any effect, on the lake quality.

DNR has stated in its establishment of the ecozone and referencing the sunset clause that "The

purposes for establishing the ecozone need to be clearly understood so that public expectations and measures of success can be established to effectively address the proposed sunset provision of the rule".

There has clearly been NO objective measure of success (only opinion) of the ecozone and therefore the sunset clause should be honored and the burden to reestablish the ecozones should be kept.

Thank you.

**Comment Received** 8/23/2013 8:19:24 AM

**Commenter Name** Jeffrey Thornburgh

**City** Leesburg **County** KOSCIUSKO **State** IN

**Organization (optional)** LTPO Member

**E-Mail Address** jthornburgh@premedtec.com

**Comments** As a residents of Tippecanoe Lake for 34 years, my wife Pam and I are very much in favor of the Eco-Zone. Since it's inception, we have notice more native vegetation filling in along the shoreline.

Safer conditions for skiing, safer boating conditions, and improved water quality by keeping the large power boats out of shallow water.

We agree with the elimination of the area known as Hoy's Landing, the Northwest Quanrant, restricting trolling motors to be electric, and the elimination of the "sunset provision".

We appreciate the opportunity to express our support.

Sincerely, Jeff & Pam Thornburgh

**Comment Received** 8/27/2013 12:56:38 PM

**Commenter Name** Jim Necombe

**City** Leesburg **County** KOSCIUSKO **State** Indiana

**Organization (optional)** LTPO member and lake resident

**E-Mail Address** jlnewc@embarqmail.com

**Comments** The minutes of the NRC meeting where the Tippecanoe Ecozones were adopted (1/13/2009) state as follows: "Jane Ann Stautz directed the attention of Commission members to the recommendation for final adoption in 6.D. on page 71 of the report, for prompt development of metrics to measure success of any rule amendments. She said, "I know there was some email correspondence with regard to some proposals around that, but again, I would like to emphasize the importance of having those metrics in place as we anticipate more issues like this in the establishment of these types of ecozones to make sure that we are very clear on what we are measuring, the effectiveness of this. I think it will help us going forward."

Chairman Poynter expressed his concurrence with the Vice Chair's remarks. He reflected that having a good measure for the success of the ecozone was important."

To my knowledge these metrics have not been established nor published to the lake residents and LTPO members such as me.

Therefore, again we are dealing with only anecdotal comments and therefore, following the lead of the NRC on January 13, 2009 should not extend the ecozones since the DNR cannot state that it is "...sure that we are very clear on what we are measuring, the effectiveness of this."

For the above reasons the ecozones should be sunset as was the intent when the rule was established and in the absence of any quantifiable metrics which were to be established to allow a measure of success.

**Comment Received** 8/28/2013 9:59:58 AM

**Commenter Name** Robert A. Ragland

**City** Leesburg **County** KOSCIUSKO **State** IN

**E-Mail Address** rags@reagan.com

**Comments** I was unable to attend tonight's meeting concerning Lake Tippecanoe and the removal of the Ecozone sunset clause. I am a permanent Lake Tippecanoe resident since 1991 and began my Lake Tippecanoe life in 1960.

Previously, I was an LTPO Landing Director, Lake Patrol Officer and Vice President.

Although the intent of the Ecozone sounds like a good cause, DNR states that measurable data (metrics) must be defined, recorded and brought to a public hearing. I talked with several people who attended tonight's meeting and understand there were no metrics provided to justify removal of the sunset clause.

Lake Tippecanoe, Indiana's deepest natural lake is and has been defined by 2 studies (DNR and Grace college) as being a very clean lake.

The Ecozone areas were planted with native Lake Tippecanoe vegetation in certain test areas and were a well documented colossal failure.

AGAIN:

The main issue is the lack of metrics and I show below the NRC meeting minutes dated January 13, 2013 requiring metrics or the Ecozones expire January 1, 2014:

#### AGENDA ITEM #14

1

Consideration of Approval of Metrics to Evaluate Success of Tippecanoe Lake and James Lake Ecozone; Administrative Cause No. 09-020D

During its meeting of January 13, the Natural Resources Commission gave final adoption to rule amendments to establish restricted boating zones (commonly known as "ecozones") at Tippecanoe Lake and James Lake in Kosciusko County. The amendments are now in effect. The amendments provide these zones would expire on January 1, 2014 unless the Commission elects to extend their effectiveness. The determination whether to extend effectiveness would be based upon the success of the amendments for the intended purposes. The hearing officer report recommended the DNR establish metrics by which to measure success, and members of the Commission stressed this need during January deliberations. Included in the January meeting minutes was a statement by Vice Chair, Jane Ann Stautz, which provides in part: "...I would like to emphasize the importance of having those metrics in place as we anticipate more issues like this in the establishment of these types of ecozones to make sure that we are very clear on what we are measuring, the effectiveness of this. I think it will help us going forward."

In response to the expressed need for metrics to measure the success of the ecozone at Tippecanoe Lake and James Lake, the Division of Fish and Wildlife has developed

proposed metrics. The metrics are set forth below, and the Division seeks the Commission's approval for their usage.

**EVALUATING TIPPECANOE LAKE AND JAMES LAKE ECOZONE (09-020D)**

The administrative rule (312 IAC 5-6-9) creating the ecozone became effective in April of 2009. The rule contains a sunset clause ending on January 1, 2014. During this time period the effectiveness of the ecozone is to be measured and a determination made whether to develop a permanent rule beginning in 2014. That determination will be based on how effective the ecozone was in addressing the following four reasons for establishing the ecozone.

- 1) To protect the Ball Wetland's vegetation from further decline.
- 2) To address public safety issues in the boating channel between the lakes and in shallow water.
- 3) To make the boating restricted zones enforceable by clearly making them so that law enforcement and boaters do not have to guess where is the legal shoreline.
- 4) To create the opportunity for restoration of both emergent and submerged native aquatic plants, particularly in the flats area, either naturally or by restoration projects.

Reasons 1 and 4 will be evaluated by ecozone plant surveys in 2008, 2009 and at least in 2012 using DNR standard guidelines. The 2008 base surveys were completed in 2008. The 2009 surveys are planned and funded by the DNR Lake and River Enhancement program. At least one future survey is planned for 2012 but state budgeting requirements do not allow funding commitments that far in the future.

NRC Chairman Poynter states in the Notice of Public Hearing dated 8-7-13, "... further deterioration of Ball Wetlands that was likely caused by wave action." Yet, he provides no metrics and relies solely on LTPO and DNR statements of subjective observations and not defined, objective metrics as required by the NRC!

Again, metrics have not been brought forth and therefore the Ecozones shall then be removed.

Sincerely,

Robert A. Ragland

Vice President (former), LTPO

**Comment Received 8/29/2013 9:18:49 PM**

**Commenter Name** Douglas B. Mueller

**City** Carmel **County** HAMILTON **State** Indiana

**E-Mail Address** dbmueller@att.net

**Comments** I went to tonight's public hearing on the Lake Tippecanoe/Lake James sunset clause removal and came away very disappointed. As a life-long citizen of Indiana and a life-long (50+ years) visitor to Lake Tippecanoe I have watched the lake evolve over time. When the Lake Tippecanoe Property Owners began to discuss the creation of the ecozones on our lake my first reaction was why. Grace College surveys of the Kosciusko County Lakes had indicated that Lake Tippecanoe has been getting cleaner and cleaner. The lake's eco-system is healthy and fishing is better than I ever remember. This fact was a direct contradiction to information provided at the Natural Resources Commission hearing March 18, 2008 where it was said "There is an indirect connection between declining water quality and nuisance algae production and the decline in emergent vegetation". Well if the water quality studies were showing water quality improvement why were the ecozones approved by the commission in the first place?

The proponents of the ecozones and sewer systems gained control of the Lake Tippecanoe

Property Owners board and started pushing their agendas. Once it was apparent that ecozones on Lake Tippecanoe were more likely than not going to become a reality I was happy to see that there was a “sunset clause” but also concerned that it was merely a way of placating the opponents realizing that once the zones were in place how were they going to get rid of them. I then was happy to see that at a Natural Resources commission meeting January 13, 2013 they put in place metrics to determine the Metrics to Evaluate Success of Tippecanoe Lake and James Lake Ecozone; Administrative Cause No. 09-020D.

During its meeting of January 13, the Natural Resources Commission gave final adoption to rule amendments to establish restricted boating zones (commonly known as “ecozones”) at Tippecanoe Lake and James Lake in Kosciusko County. The amendments are now in effect. The amendments provide these zones would expire on January 1, 2014 unless the Commission elects to extend their effectiveness. The determination whether to extend effectiveness would be based upon the success of the amendments for the intended purposes. The hearing officer report recommended the DNR establish metrics by which to measure success, and members of the Commission stressed this need during January deliberations. Included in the January meeting minutes was a statement by Vice Chair, Jane Ann Stautz, which provides in part: “...I would like to emphasize the importance of having those metrics in place as we anticipate more issues like this in the establishment of these types of ecozones to make sure that we are very clear on what we are measuring, the effectiveness of this. I think it will help us going forward.” In response to the expressed need for metrics to measure the success of the ecozone at Tippecanoe Lake and James Lake, the Division of Fish and Wildlife has developed proposed metrics. The metrics are set forth below, and the Division seeks the Commission’s approval for their usage.

#### EVALUATING TIPPECANOE LAKE AND JAMES LAKE ECOZONE (09-020D)

The administrative rule (312 IAC 5-6-9) creating the ecozone became effective in April of 2009. The rule contains a sunset clause ending on January 1, 2014. During this time period the effectiveness of the ecozone is to be measured and a determination made whether to develop a permanent rule beginning in 2014. That determination will be based on how effective the ecozone was in addressing the following four reasons for establishing the ecozone.

- 1) To protect the Ball Wetland’s vegetation from further decline.
- 2) To address public safety issues in the boating channel between the lakes and in shallow water.
- 3) To make the boating restricted zones enforceable by clearly making them so that law enforcement and boaters do not have to guess where is the legal shoreline.
- 4) To create the opportunity for restoration of both emergent and submerged native aquatic plants, particularly in the flats area, either naturally or by restoration projects.

Reasons 1 and 4 will be evaluated by ecozone plant surveys in 2008, 2009 and at least in 2012 using DNR standard guidelines. The 2008 base surveys were completed in 2008. The 2009 surveys are planned and funded by the DNR Lake and River Enhancement program. At least one future survey is planned for 2012 but state budgeting requirements do not allow funding commitments that far in the future.

NRC Chairman Poynter states in the Notice of Public Hearing dated 8-7-13, “... further deterioration of Ball Wetlands that was likely caused by wave action.” Yet, he provides no metrics and relies solely on LTPO and DNR statements of subjective observations and not defined, objective metrics as required by the NRC!

Since I was aware of this action I went to this public hearing to hear about these metrics and the proof that that these ecozones were achieving the stated goals as required by the Nat

**Comment Received 8/29/2013 10:52:41 PM**

**Commenter Name** Jim Newcombe  
**City** Leesburg **County** KOSCIUSKO **State** Indiana  
**Organization (optional)** LTPO member and lake resident  
**E-Mail Address** jlnewc@embarqmail.com  
**Comments** Comments to DNR August 29, 2013

As an attendee at today's (8/29/13) hearing, I strongly believe that this meeting should not be considered as a proper public hearing on the ecozone issues.

Unfortunately, the turnout was dismal, entirely due to the timing of the meeting - when lake area property owners were at their "real" homes due to school already being in session, for up to three weeks. In fact, there are over 1300 lake properties impacted by this rule and there were less than two dozen participants in the meeting. Less than 1/4 of the homes/cottages on the lake are occupied year round, explaining the lack of attendance at the hearing/meeting. Summer no longer ends on Labor Day as was stated - it ends when school starts, and this was as early as August 1 in many parts of the state and August 13th locally. Any property owners wanting to come to the meeting could not do so due to home commitments and the fact that the hearing was held during the week on a school night. This evening's hearing was not a proper public hearing owing to the lack of possibilities for involved and impacted citizens to be available for the meeting. It matters not whether this was due to issues within the DNR (as was stated by the hearing officer) or the LTPO officers - the meeting should have been scheduled when property owners and others impacted by the rule could attend, perhaps as early as during the early part of summer. Unfortunately, this matter of holding important meetings when property owners and others impacted by the issue are gone is the normal, standard operating procedure for the LTPO Board, including when the issue of ecozones first came up in a winter LTPO Board meeting when hardly anyone was at the lake.

I again repeat my comments from yesterday via this website that the sunset should occur as stated in the original rule, as there has been no data presented showing any benefit to the ecozones other than anecdotal statements made by Mark Ennes - with no data surfacing, much less being available for peer review. This certainly does not satisfy the requirement stated in the NRC minutes I forwarded yesterday that there be metrics established and against which the success or failure of the ecozone be determined.

Failing the absolute and proper sun-setting of the ecozone - that portion eliminating other than electric trolling motors alongside the Ball wetlands, as I agree with and promoted the idle zone restrictions to be based on the perceived shorelines rather than the official shorelines - it is incumbent on the DNR, as a scientifically-, data-based department of Indiana government, to establish (NOW) metrics to determine success or failure and set a new sunset date, perhaps two additional years, when true metrics, not anecdotal comments, will be used to make a proper, data-based decision.

**Comment Received** 8/29/2013 11:33:38 PM



Aug 25, 2013

MR Doug KELLER

I'm writing as a property owner and member of the Lake Tappan Property Owners. I support the proposed changes to the Eco Zone and have been a supporter of establishing the Eco Zone. I do question removing the sunset clause from the regulation.

It seems that regular re-evaluation of regulations and programs can be valuable.

I accept there have been some benefits from the Eco Zone even though they are not easy to recognize this soon. This past week there have been large areas of floating algae which I understood would possibly subside with the implementation of the Eco Zone.

Just an example of the fact that the process takes time. During this time I recommend we continue to periodically re-evaluate programs for improvement.

Very truly yours, David Beer 6478 N. 300E  
LEESBURG TN 46538



**Kosciusko County Sheriff's Department**

221 West Main Street  
Warsaw, Indiana 46580  
(574) 267-5667 Fax (574) 269-6195

**W. R. Goshert, Sheriff**

*Tradition In Service Since 1836*

Bryan Poynter, Chair, Natural Resource Commission  
Division of Hearings  
100 N Senate Ave, Room N501  
Indianapolis, IN 46204

March 13, 2013

Mr. Bryan Poynter,

I am aware that the special boating zones on Lake Tippecanoe and Lake James in Kosciusko County are currently under review and a proposal has been forwarded to alter the zone in various areas.

I, as the Kosciusko County Sheriff's Department lake patrol coordinator, am familiar with the boating practices on these lakes and find that this area of boating restrictions enhances the safety of lake patrons. The area currently under the restrictions of the special boating zone are very shallow and pose a real threat to the safety of high speed boaters, their passengers, and persons being towed by a boat operated in these areas at a high speed. It is appropriate for these areas of Lake Tippecanoe and Lake James to be restricted to electric motors only or idle speed only.

Therefore I am recommending adoption of amendment to 312 IAC 5-6-9 to establish permanent special boating zones on Tippecanoe Lake and James Lake as listed in Administrative Cause No. 12-098L.

A handwritten signature in black ink, appearing to read "Jon Tyler".

Sgt. Jon Tyler  
Lake Patrol Coordinator  
Kosciusko County Sheriff's Department

**EXHIBIT C****DIVISION OF FISH AND WILDLIFE RESPONSE**

TO: Sandy Jensen and Jennifer Kane  
FROM: Doug Keller  
DATE: September 3, 2013  
SUBJECT: DNR response to Tippecanoe/James ecozone rule

The few negative comments related to the Tippecanoe Lake/James Lake ecozone around Ball Wetland relate to the elimination of a future sunset clause and the establishment of metrics to determine whether the establishment of the ecozone had the desired effect on the plant community in the vicinity of the ecozone.

I disagree with written comments made by Mr. Newcombe on 8/28 and 8/29, Mr. Ragland on 8/29, and Mr. Mueller on 8/29 that no metrics have been used to determine whether the establishment of the ecozone in 2009 produced the desired effects on the aquatic plant community. Aquatic plant surveys were performed within the ecozone area in 2008 prior to establishment of the ecozone. The same survey points were revisited in the summer of 2012 to scientifically evaluate changes. The data clearly shows a marked improvement in the submersed plant community. Specific changes included 95% of survey sites with submersed plants in 2012 compared to 68% in 2008, species per site rose from 1.45 in 2008 to 2.03 in 2012, and the native species diversity index is up from 0.78 in 2008 to 0.81 in 2012.

There were less obvious changes in the emergent plant community when scientifically evaluated in 2008 and 2012. None the less the emergent beds increased over the 4 year period from 5.81 acres in 2008 to 6.95 acres in 2012. It is not surprising that the emergent plant community is slower in responding than the submersed plants. As submersed plants become denser the uprooting effect by wave action on emergent plants will be lessened and they will continue to improve.

The improvements in the aquatic plant community were described and captured in the notes of the May 14, 2013 NRC meeting where preliminary adoption was received for this rule.

The negative comments seemed to center around the notion that data was not present to defend improvements in the aquatic plant community so they didn't want to see a sunset clause totally

eliminated. The data is present and improvements are obvious and will continue to be realized as time goes on especially in regards to the emergent plant community.

Mr. Ragland's written comments on 8/23 imply that there was bias in the plant survey performed by Aquatic Control to please LTPO for exchange for future treatments to be performed by the herbicide applicator. The 2008 and 2012 plant surveys were funded by the Lake and River Enhancement Program (LARE) and the survey protocols are well defined for all LARE funded plant surveys. Our LARE biologists and district fisheries biologists review plant data and the draft reports produced by Aquatic Control and all agree that the data is true and results are accurate. These public reports are available on the LARE website for all to review.

The ecozone was put into place for a number of reasons: (1) protect the Ball Wetland from further decline, (2) public safety in these shallow areas around the wetland, and (3) establish clearly enforceable restricted zones. I have already described the improvements in the plant community which demonstrates the wetland is actually improving. Adding another sunset clause will only force additional efforts to continue to prove what is already occurring. Public safety and enforceable zones continue to be a priority and in no way will adding another sunset clause to the rule negate the fact that these are things that should be considered.

The majority of those offering written or verbal comments are in favor of continuing the ecozone permanently. A number of those responding favorably have observed improvements in the plant community within these protected areas and see no reason to add another sunset clause.

**EXHIBIT D**

**TITLE 312 NATURAL RESOURCES COMMISSION**

**Final Rule**

LSA Document #13-213

**DIGEST**

Amends 312 IAC 5-6-9 by eliminating a portion of the special boating zone, removing the expiration date of the rule, and making other technical corrections. Effective 30 days after filing with the Publisher.

**312 IAC 5-6-9**

SECTION 1. 312 IAC 5-6-9 IS AMENDED TO READ AS FOLLOWS:

**312 IAC 5-6-9 Tippecanoe Lake and James Lake; special boating zones**

**Authority: IC 14-10-2-4; IC 14-15-7-3**

**Affected: IC 14**

Sec. 9. (a) This section establishes special boating zones in Kosciusko County on Tippecanoe Lake, James Lake, and channels connected to these lakes. Oswego Lake is:

- (1) exempted from this section; and
- (2) controlled by 312 IAC 5-11-12.

(b) Except as provided in subsection (a), a person must not operate a boat in excess of ten (10) miles per hour on Tippecanoe Lake west of the east entrance to Bellrohr Channel. Bellrohr Channel connects to a basin of Tippecanoe Lake that is sometimes referred to as Oswego Lake.

(c) A person must not operate a boat with other than ~~a~~ **an electric** trolling motor or paddle in the Flats on the west side of the Ball Wetlands in Tippecanoe Lake. The boundary of the restricted zone:

- (1) begins on shore at SPC 2210825 (UTM 4574804) north and SPC 306682 (UTM 605075) east at the mouth of the Grassy Creek Channel;
- (2) continues in a northerly direction to the points:
  - (A) SPC 2211084 (UTM 4574883) north and SPC 306694 (UTM 605078) east;
  - (B) SPC 2211419 (UTM 4574985) north and SPC 306710 (UTM 605081) east;
  - (C) SPC 2211796 (UTM 4575102) north and SPC 307236 (UTM 605239) east;
  - (D) SPC 2212451 (UTM 4575304) north and SPC 307630 (UTM 605356) east;
  - and
  - (E) SPC 2212483 (UTM 4575315) north and SPC 307897 (UTM 605438) east;
  - and
- (3) concludes on shore at the mouth of the channel to James Lake at SPC 2212515 (UTM 4575326) north and SPC 308232 (UTM 605540) east.

(d) A person must not operate a boat in excess of idle speed in the following areas:

(1) In Grassy Creek Channel south of the entrance to Tippecanoe Lake from a point at SPC 2211098 (UTM 4574886) north and SPC 306467 (UTM 605008) east.

(2) In the channel between Tippecanoe Lake and James Lake beginning with a point in eastern Tippecanoe Lake at ~~SPC 2212629 (UTM 4575358)~~ **SPC 2212677 (UTM 4575375)** north and ~~SPC 307582 (UTM 605341)~~ **SPC 308135 (UTM 605509)** east and ending with a point in western James Lake at SPC 2212481 (UTM 4575322) north and SPC 309636 (UTM 605968) east.

(3) In James Lake bordering the Ball Wetlands. The boundary of the restricted zone:

(A) begins at a point north of the channel to Tippecanoe Lake at SPC 2212864 (UTM 4575437) north and SPC 309179 (UTM 605826) east;

(B) continues in a southerly direction to the points:

(i) SPC 2212481 (UTM 4575322) north and SPC 309636 (UTM 605968) east;

(ii) SPC 2212626 (UTM 4575369) north and SPC 310139 (UTM 606120) east;

(iii) SPC 2212045 (UTM 4575194) north and SPC 310717 (UTM 606299) east;

(iv) SPC 2211233 (UTM 4574947) north and SPC 310629 (UTM 606276) east;

(v) SPC 2210783 (UTM 4574811) north and SPC 310971 (UTM 606382) east;

(vi) SPC 2209873 (UTM 4574533) north and SPC 310724 (UTM 606311) east;

(vii) SPC 2209521 (UTM 4574426) north and SPC 310856 (UTM 606353) east; and

(viii) SPC 2209302 (UTM 4574357) north and SPC 310387 (UTM 606211) east; and

(C) concludes with the southernmost point placed at SPC 2208961 (UTM 4574255) north and SPC 310797 (UTM 606338) east.

~~(4) Adjacent to Hoy's Landing in Tippecanoe Lake just north of the channel to James Lake. The boundary of the restricted zone:~~

~~(A) begins from shore at SPC 2213327 (UTM 4575570) north and SPC 307522 (UTM 605320) east;~~

~~(B) continues in a southeasterly direction to the points:~~

~~(i) SPC 2213107 (UTM 4575503) north and SPC 307546 (UTM 605328) east;~~

~~(ii) SPC 2212831 (UTM 4575419) north and SPC 307581 (UTM 605340) east; and~~

~~(iii) SPC 2212806 (UTM 4575414) north and SPC 307997 (UTM 605467) east; and~~

~~(C) concludes on shore at SPC 2212759 (UTM 4575401) north and SPC 308357 (UTM 605577) east.~~

(e) In order to be effective, a zone established under this section must include buoys placed on site under 312 IAC 5-4.

~~(f) Subsections (e) and (d) expire on January 1, 2014.~~ *(Natural Resources Commission; 312 IAC 5-6-9; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2374, eff Jan 1, 2002; readopted filed May 29, 2008, 1:53 p.m.: 20080625-IR-312080057RFA; filed Mar 2, 2009, 1:22 p.m.: 20090401-IR-312080295FRA; errata filed Jun 2, 2009, 10:29 a.m.: 20090624-IR-312090386ACA)*